

REMARKS

Applicants respectfully request reconsideration and allowance of this application in view of the amendments above and the following comments.

The Advisory Action dated November 8, 2004, indicates that the amendment dated October 15, 2004, will be entered. In case this has not been done, Applicants respectfully request that the Examiner enter that amendment now.

According to the same Advisory Action, the amendment dated October 15, 2004, overcomes the rejection of claims 19 and 21-26 under 35 USC § 112, first paragraph. Accordingly, Applicants consider this issue removed, and address it no further.

Claims 18, 20, 36-39 and 45-47 were rejected under 35 USC § 102(b) as being anticipated by Gettings et al. ("Gettings"), U.S. Patent No. 4,908,355. In response, Applicants submit that the Gettings disclosure is not sufficiently focused enough to constitute an anticipation. The Examiner does not point to any specific embodiments having all of the ingredients required by the instant claims. Instead, the Examiner points to broad generic teachings wherein some of the instant ingredients, such as Gettings abrasive and astringent are only optional ingredients. Thus, for example, Gettings teaches at column 9, lines 40 ff, that the composition "may also include * * * an abrasive": and at column 9, lines 46 ff, "there may be included an astringent." Nowhere is it ever disclosed definitively in Gettings a combination having both an abrasive and an astringent. The lack of such definitive teaching of such a combination precludes anticipation. In this regard, it is not sufficient for anticipation that the prior art include a laundry list of possible ingredients, the correct selection of which would render the claimed invention. Rather, the prior art must be sufficiently focused as to place such selection in the possession of the public. Clearly, Gettings is not sufficiently focused to this extent. Thus, the Examiner points to nothing other than these broad generic passages as teaching the present invention. Applicants submit that such teachings fall far short of the focus needed for anticipation.

Applicants would also point out that even if Gettings' abrasive and astringent passages were properly combined, there are too many possible permutations to constitute anticipation. Gettings lists some 15 possible abrasives and some 11 possible astringents, yielding some 165 possible permutations, only a few of which would result in anticipation of the instant claims. It is well established that a genus of such breadth cannot anticipate a narrower, embraced species claim. Consequently, again, Applicants respectfully submit that Gettings does not constitute an anticipation.

Further on this point, Applicants respectfully request that special consideration be given to new claims 48 and 49, which are supported by the instant examples. Applicants do not believe that either claim introduces new matter, or that either claim is anticipated by Gettings. An early notice to that effect is earnestly solicited.

Claims 40-44 were rejected under 35 USC § 103(a) as being obvious over Gettings. In response, Applicants point out that this rejection was premised on Gettings anticipating the basic features of the present invention, which has been shown above is no the case. Consequently, Applicants submit that this rejection should be reconsidered and withdrawn as well.

Claims 19 and 21-26 were rejected under 35 USC § 103(a) as being obvious over Gettings in view of Muller et al. ("Muller"), WO 98/01109, and Dodd et al. ("Dodd"), U.S. Patent No. 6,656,456. In response, Applicants point out that the Examiner concedes that Gettings does not teach either distarch phosphate or cyclodextrin. According to the Examiner, the motivation to use these ingredients comes from the secondary references, Muller and Dodd. Applicants respectfully disagree. Gettings at column 9, lines 42 and 47, expressly teaches that the abrasive and astringent are "selected from the group consisting of" the recited ingredients. Persons skilled in the art are well aware of the significance of this wording, and that it indicates in no uncertain terms that unrecited ingredients are not included and are not be used. Consequently, such persons would not,

in fact, have been motivated by Muller and Dodd to use distarch phosphate and/or cyclodextrin since these ingredients are not among the list in Gettings.

Claims 27-35 were rejected under 35 USC § 103(a) as being obvious over Gettings in view of Kropf et al. ("Kropf"), U.S. Patent No. 6,316,030. In response, Applicants point out that the Examiner concedes that Gettings does not teach aluminum hydroxylactate. According to the Examiner, the motivation to use this ingredient comes from Kropf. Again, Applicants respectfully disagree. As noted above, Gettings recites his list of astringents using the closed terminology "selected from the group consisting of." Persons skilled in the art would, thus, not have been motivated to use astringents other than those recited.

Applicants believe that the foregoing constitutes a bona fide response to all outstanding objections and rejections.

Applicants further believe that this application is in condition for immediate allowance. However, should the Examiner determine that any issue(s) of a minor nature remain, the Examiner is respectfully requested to telephone the undersigned at telephone number (212) 808-0700 so that the issue(s) might be promptly resolved.

Early and favorable action is earnestly solicited.

Respectfully submitted,
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